that an order for costs or compensation is to be made in addition to any other punishment and the same considerations seem to me to apply to this section as to section 295. Binding over under section 294 is not in my opinion a punishment because this section provides that the Court may release an accused person upon a bond "instead of sentencing him at once to any punishment." Moreover, one of the conditions in the bond is to appear and receive judgment if and when called upon and it would be on this occasion that any punishment would be awarded.

I am therefore of opinion that under section 426 no order can be made for payment of either costs or compensation by the accused unless some punishment has been awarded.

For the above reasons, I must vary the order of the learned District Judge by deleting therefrom the orders for payment into Court at $10 per month the sum of $200 to Song Seng Phuan and the order for the payment of costs. The $15 costs if paid must be returned to the accused, and if any money has been paid into Court and is still in Court in respect of the compensation this must also be returned to the accused. If any compensation has in fact been paid to Song Seng Phuan himself he will be entitled to retain it as I have no power to order him to return any money to the accused.

Order for Payment of Compensation and Costs set aside.

CHELLAPAH v. GOH KIM LIEW & ORS.

[A. C. J. (Pretheroe Ag. C.J.) March 5, 1948]

[K. L. — Civil Appeal (Labour) No. 20 of 1947]

Labour Code (Cap. 154) s. 93 — Adjudication by Assistant Commissioner of Labour — Allegation that Assistant Commissioner was biased.

This was an appeal from the adjudication of the Assistant Commissioner of Labour, Klang between the appellant and his employees. One of the grounds of appeal was that the whole adjudication should be set aside as there was a real likelihood that the Assistant Commissioner who conducted the enquiry would be biassed. It was alleged that the Assistant Commissioner had taken part in endeavouring to settle a dispute between the appellant and some of his employees, who formed a large majority of the respondents.

Held: as there was no evidence that the Assistant Commissioner had identified himself solely or even chiefly with either side, he was not debarred from conducting the adjudication because of the likelihood of bias or for any other reason.

Cases referred to:—

(1) *The King v. The Justices of Sunderland* (1901) 2 K.B. 357.

(2) *Chhin Sin Choy v. Chin Kee & Ors.* 4 F.M.S.L.R. 3.

K. K. Benjamin for the appellants.

R. Ramani for the respondents.

Pretheroe Ag. C.J.: — This is an appeal from an adjudication under section 93 of the Labour Code (Cap. 154) by the Assistant Commissioner of Labour, Klang, between an employer (the appellant) and about 590 of his employees (the respondents). There were several grounds of appeal, and the relevant facts will be stated as each ground of appeal is considered.

The first ground of appeal was that the whole adjudication should be set aside as there was a real likelihood that the Assistant Commissioner of Labour who conducted the enquiry (hereinafter referred to as "the Assistant Commissioner") would be biased. In support of this submission Mr. Benjamin, on behalf of the appellant, drew attention to the following activities of the Assistant Commissioner. In the early months of 1947 there had been a dispute concerning terms of service between the appellant and his Indian employees (who form a large majority of the present respondents), and the Assistant Commissioner took a very active part in endeavouring to settle that dispute. In fact he performed the duties of what is now known in modern Trade Union practice, I believe, of a conciliator. The points in dispute were eventually settled, and the Assistant Comissioner then assisted in preparing a draft agreement embodying the agreed decisions, which was signed by the interested parties on the 22nd of February, 1947. Finally, it was contended that the appellant desired to call the Assistant Commissioner as a witness at the very adjudication over which he presided. The Assistant Commissioner was informed of this fact at the start of the adjudiction, and he gave his reasons (at page 205 of the record) for declining to give evidence. The appellant stated that he desired the Assistant Commissioner to give evidence on three subjects which he alleged would disclose breaches of the February agreement by the labourers. On two of the subjects the Assistant Commissioner pointed out that he could give no direct evidence whatever: his knowledge thereof was derived solely from what he had been told by the parties. Regarding the third subject he agreed that he could have given direct evidence, but on that point his Labour Inspector was an equally competent witness and was available to give evidence.

In support of the submission that the Assistant Commissioner's previous activities, which I have just described, were such as to cause a real likelihood that he would be biased, Mr. Benjamin cited *The King v. The Justices of Sunderland*[1] and *Chhin Sin Choy v. Chin Kee & Ors.*[2]. Before commenting on these cases I should interpolate here that Mr. Benjamin

willingly conceded that there was no question of the Assistant Commissioner having the slightest financial interest in the adjudication. In the former of the two cases just mentioned, the three learned Judges suggested the test to be applied in cases of this nature in very similar terms. The Master of the Rolls expressed the view that wherever there was a real likelihood that the Judge would, from kindred or any other cause, have a bias in favour of one of the parties, it would be very wrong for him to act. *Chhin Sin Choy v. Chin Kee & Ors.*[2] is authority, if such should be required, for the proposition that this same test is applicable in this country. I think, however, that both these cases can be distinguished from the present case in that there was, or appeared to be, direct personal interest and therefore the possibility of bias in both cases. In *Chhin Sin Choy v. Chin Kee & Ors.*[2], the Assistant Commissioner had appeared before a Magistrate on behalf of the labourers, under section 85 of the Labour Code, and the employer was the defendant in that action. Clearly, therefore, the Assistant Commissioner had identified himself with one of the parties to the dispute as against the other party. In the *Sunderland Justices*[1] *case* certain of the Justices had actively negotiated an agreement with the brewery company concerned, the same Justices then took part in approving the application of the brewery company for the licence, and then again they took part when the issue of the licence was confirmed. There the Justices had clearly identified themselves with the particular brewery company and would reasonably be expected to be biased against any applicant other than that company for the Licence. Also one cannot overlook a point to which the learned Master of the Rolls apparently made indirect reference. Part of the agreement was that the brewery company should pay the Borough Council £10,000 if it was granted the licence, and there is always the possibility that at any future municipal election the rate-payers might be disposed to view in a favourable light the candidature of a person who had assisted to save the rate-payer the sum of £10,000. In the present case the Assistant Commissioner assisted in negotiating a settlement of a dispute between employer and employees: he went from one side to the other making suggestions and frequently used his good offices to secure a satisfactory settlement. He did not identify himself solely, or even chiefly, with either side, and I can see no reason why such activities should make him likely to be biased either way. It is perhaps a matter for comment that no actual bias was alleged, nor was it stated in favour of of which party in the present case the Assistant Commissioner was likely to be biased. In my opinion, therefore, the Assistant Commissioner was not debarred from conducting the adjudication because of the likelihood of bias or for any other reason.

[The rest of the judgment dealt with matters not relevant to this report and are therefore omitted. — **Ed.**]

Appeal dismissed.

Solicitors: *Benjamin & Sen; Braddell & Ramani.*

LIM KIM HOCK & ANOR. v. KANG CHAI THOAN

[O. C. J. (Taylor J.) September 21, 1948]

[Singapore — Civil Suit No. 376 of 1947]

Landlord and Tenant — Courts (Restriction of Civil Jurisdiction) Ordinance, 1946, s. 2 — Whether action concerning a licence is triable.

In this case the plaintiff claimed possession of *inter alia* the dining room and sitting room in a house, which the defendant had been allowed to use when part of the house was let to him. The premises were let to the defendant during the Japanese occupation.

Held: the transaction in which the licence was granted in this case involved an interest in immovable property and therefore the Courts (Restriction of Civil Jurisdiction) Ordinance 1946 applied to prohibit litigation concerning the licence.

Case referred to:—

(1) *Yeo Peck Chie v. Gill* (1946) M.L.J. 131.

CIVIL SUIT.

N. N. Leicester for the plaintiffs.

H. A. R. Paulusz for the defendant.

Taylor J.: — The plaintiffs have lately purchased a house No. 24 Blair Road. The defendant, who is an Assistant Inspector of Schools, is in occupation of part of the house. The plaintiffs' claim, after amendment during the hearing, is to recover possession of two rooms on the ground floor, the plaintiffs conceding that the defendant is entitled under the temporary legislation to remain in occupation of the front room